

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

EXXONMOBIL OIL CORPORATION,)
A New York Corporation,)
)
Plaintiff,)
)
v.) No. 08 CV 3064
)
D CONSTRUCTION MANAGEMENT)
COMPANY, INC., an Illinois Corporation, et al.,)
)
Defendants.)

TRANSYSTEMS CORPORATION'S CROSS-CLAIMS

NOW COMES Defendant, Transystems Corporation, by its counsel, Vanek, Vickers & Masini, P.C., and for its Cross-Claims against the Defendants D Construction Management Company, Inc., PT Ferro Construction Company, Inc. and Consoer Townsend Envirodyne Engineers, Inc., states as follows:

GENERAL ALLEGATIONS

1. On Information and belief, ExxonMobil Oil Corporation ("EMOC") is a New York Corporation with its principal place of business in Houston, Texas, and is engaged in the petrochemical, petroleum and related industries.
2. On information and belief, D Construction Management Company, Inc. ("D Construction") is an Illinois Corporation with its principal place of business in Coal City, Illinois, and is a corporation engaged in providing general contracting, excavation and road construction services.
3. On information and belief, PT Ferro Construction Company, Inc. ("PT Ferro") is an Illinois Corporation with its principal place of business in Joliet, Illinois, and is a corporation

engaged in providing general contracting, subcontracting, excavation and road construction services.

4. On information and belief, Consoer Townsend Envirodyne Engineers, Inc. ("Consoer") is a Delaware Corporation with its principal place of business in Chicago, Illinois, and is a corporation engaged in providing construction management and engineering overnight services.

5. Transystems Corporation ("Transystems") is a Missouri Corporation with its principal place of business in Kansas City, Missouri, and is engaged in providing engineering services related to transportation projects.

6. On May 28, 2008, EMOC filed its Complaint against Transystems, and other defendants, arising out of a roadway reconstruction project for Arsenal Road in Will County, Illinois ("Arsenal Road Project").

7. On July 24, 2008, Transystems filed its Answer and Affirmative Defenses denying all material allegations directed against Transystems.

8. EMOC alleges in its Complaint that during the Arsenal Road Project, electrical lines supplying electricity to the EMOC facility were cut and pulled from their moorings at the transformer, short circuiting the electricity and causing a power outage to EMOC's water filtration plant.

9. EMOC further alleges that a second set of electrical lines was also partially pulled from its moorings.

10. EMOC seeks damages from Transystems, and other defendants, in the amount of \$950,000 for repair and replacement of the damaged electrical lines.

CROSS-CLAIMS

Pleading in the alternative, and without prejudice to any present or future denials or answers pled by Transystems in response to the EMOC Complaint, Transystems asserts the following cross-claims for contribution.

COUNT I
(Contribution v. D Construction)

11. Transystems realleges and incorporates paragraphs 1 through 10 of the General Allegations as paragraph 11 of this Count I as though fully set forth herein.

12. EMOC alleges that D Construction was hired by the County of Will to serve as the general contractor and employed PT Ferro as a subcontractor to excavate and remove the pavement for the Arsenal Road Project.

13. EMOC claims that D Construction owed a duty to use reasonable care in the excavation, construction and improvement of Arsenal Road, Will County, Illinois.

14. In the event EMOC is entitled to any recovery from Transystems for its purported negligence, which Transystems has denied and continues to deny, then said recovery shall be based, in whole or in part, on the negligence of D Construction, who EMOC alleges committed one or more of the following negligent acts and/or omissions:

- a. Failed to properly identify Plaintiff EMOC's property along side and under Arsenal Road;
- b. Failed to properly protect Plaintiff EMOC's property from damage; and
- c. Failed to properly hire, supervise and train employees and subcontractors to prevent damage to Plaintiff EMOC's property.

15. If Transystems is found to be liable to EMOC in this matter, then Transystems is entitled to contribution from Defendant D Construction pursuant to the Illinois Joint Tortfeasor

Contribution Act, 740 ILCS 100/.01 et. seq.

WHEREFORE, Defendant/Cross-Plaintiff, Transystems Corporation, prays for entry of an Order that in the event a judgment or verdict is entered against it, and in favor of ExxonMobil Oil Corporation, then Defendant/Cross-Defendant, D Construction Management Company, Inc., shall be liable in contribution to Transystems Corporation, for its pro rata share of such judgment or verdict commensurate with its degree of negligence in causing damages to ExxonMobil Oil Corporation, and for such other and further relief as the Court deems just and appropriate.

COUNT II
(Contribution v. PT Ferro)

16. Transystems realleges and incorporates paragraphs 1 through 10 of the General Allegations as paragraph 16 of this Count II as though fully set forth herein.

17. EMOC alleges that PT Ferro was hired as a subcontractor by D Construction to excavate and remove the pavement for the Arsenal Road Project.

18. EMOC claims that PT Ferro owed a duty to use reasonable care in the excavation, construction and improvement of Arsenal Road, Will County, Illinois.

19. In the event EMOC is entitled to any recovery from Transystems for its purported negligence, which Transystems has denied and continues to deny, then said recovery shall be based, in whole or in part, on the negligence of PT Ferro, who EMOC alleges committed one or more of the following negligent acts and/or omissions:

- a. Failed to properly identify Plaintiff EMOC's property along side and under Arsenal Road;
- b. Failed to properly protect Plaintiff EMOC's property from damage;
- c. Failed to properly hire, supervise and train employees and subcontractors to prevent damage to Plaintiff EMOC's property; and

d. Failed to properly cease digging and excavation when it encountered EMOC's property to prevent further damage.

20. If Transystems is found to be liable to EMOC in this matter, then Transystems is entitled to contribution from Defendant PT Ferro pursuant to the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/.01 et. seq.

WHEREFORE, Defendant/Cross-Plaintiff, Transystems Corporation, prays for entry of an Order that in the event a judgment or verdict is entered against it, and in favor of ExxonMobil Oil Corporation, then Defendant/Cross-Defendant, PT Ferro Construction Company, Inc., shall be liable in contribution to Transystems Corporation, for its pro rata share of such judgment or verdict commensurate with its degree of negligence in causing damages to ExxonMobil Oil Corporation, and for such other and further relief as the Court deems just and appropriate.

COUNT III
(Contribution v. Consoer)

21. Transystems realleges and incorporates paragraphs 1 through 10 of the General Allegations as paragraph 21 of this Count III as though fully set forth herein.

22. EMOC alleges that Consoer was hired by the County of Will to act as the project coordinator and construction manager for the reconstruction of Arsenal Road.

23. EMOC further alleges that Consoer, as project manager for the Arsenal Road Project, was required to coordinate information between and among Will County, D Construction, PT Ferro, Transystems and property owners along Arsenal Road so that the excavation and construction would not damage any existing utilities or trespass upon private property.

24. EMOC claims that Consoer owed a duty to use reasonable care in the supervision of the excavation, construction and improvement of Arsenal Road, Will County, Illinois.

25. In the event EMOC is entitled to any recovery from Transystems for its purported negligence, which Transystems has denied and continues to deny, then said recovery shall be based, in whole or in part, on the negligence of Consoer, who EMOC alleges committed one or more of the following negligent acts and/or omissions:

- a. Failed to properly identify Plaintiff EMOC's property along side and under Arsenal Road;
- b. Failed to properly follow established procedures to collect and disseminate data for subsurface utilities;
- c. Failed to properly protect Plaintiff EMOC's property from damage;
- d. Failed to properly coordinate, supervise and train employees, subcontractors and contractor to prevent damage to Plaintiff EMOC's property; and
- e. Failed to undertake and implement safety procedures and protocols, and to disseminate same to contractors and subcontractors requiring that they immediately cease all work upon encountering unknown facilities while working adjacent to the refinery.

26. If Transystems is found to be liable to EMOC in this matter, then Transystems is entitled to contribution from Defendant Consoer pursuant to the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/.01 et. seq.

WHEREFORE, Defendant/Cross-Plaintiff, Transystems Corporation, prays for entry of an Order that in the event a judgment or verdict is entered against it, and in favor of ExxonMobil Oil Corporation, then Defendant/Cross-Defendant, Consoer Townsend Envirodyne Engineers, Inc., shall be liable in contribution to Transystems Corporation, for its pro rata share of such judgment or verdict commensurate with its degree of negligence in causing damages to ExxonMobil Oil Corporation, and for such other and further relief as the Court deems just and appropriate.

/s/ Scott A. Ruksakiati

Scott A. Ruksakiati
VANEK, VICKERS & MASINI, P.C.
111 S. Wacker Drive, Suite 4050
Chicago, IL 60606
(312) 224-1500

Attorneys for Defendant, Transystems Corporation

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